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IN THE

Supreme Court of the United States

October Term, 1963
No. 811

JOHN C. YRIBARNE,

Appellant,

vs.

COUNTY OF SAN BERNARDINO, BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, S. WESLEY BREAK, PAUL J. YOUNG, RICHARD G. MANLEY, NANCY E. SMITH, ROSS DANA, BUD FULLER, KARL AGAJANIAN, FRED SCHNABEL, JOHN SPENCER, CHESTER JANTZEN, and D. L. MILES,

Appellees.

MOTION TO DISMISS OR AFFIRM.

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COUNTY OF SAN BERNARDINO, BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, S. WESLEY BREAK, PAUL J. YOUNG, RICHARD G. MANLEY, NANCY E. SMITH, ROSS DANA, BUD FULLER, KARL AGAJANIAN, FRED SCHNABEL, JOHN SPENCER, CHESTER JANTZEN, and D. L. MILES,

Appellees.

MOTION TO DISMISS OR AFFIRM.

Appellees in the above-entitled case move to dismiss or affirm on the ground that (1) the matter has become moot and is no longer a case or controversy, and (2) that even if otherwise, the question presented is so unsubstantial as not to need further argument.

In support of this motion Appellees respectfully show this Court:

Opinion Below.

The appeal is taken from the judgment of the District Court of Appeal, State of California, Fourth Appellate District. The opinion is reported in 218 Adv.

Cal. App. 387, 32 Cal. Rptr. 847. When the opinion is printed in the official reports it will be in 218 Cal.App. 2d .....

Jurisdiction.

1. Appellant, plaintiff below,

> "brought a taxpayer's suit for an injunction to restrain the Defendants, the County of San Bernardino and its Board of Supervisors, [Appellees] from calling an election to be held within the boundaries of proposed Big Bear Municipal Water District, the formation of which to date has been sought by the Interveners, [also Appellees] the members of a Committee formed for that purpose." [Joint Statement of the Case, Clk.Tr. p. 103, lines 22 to 27, adopted and incorporated in the pre-trial order, Clk.Tr. p. 112, line 31, to p. 113, line 2.][1]

Section 526a of the California Code of Civil Procedure (see Appendix 1) authorizes a taxpayer to obtain an injunction restraining and preventing any illegal expenditure of, or waste or injury to, the property of any county. The Supreme Court of California has applied this section to authorize an injunction against holding an election where it appeared that the measure to be submitted to the popular vote would be "wholly void and inoperative." (*Harnett v. County of Sacramento*, 195 Cal. 676, 683.) In seeking the injunction Appellant relied on the *Harnett* case [Clk.Tr. p. 61] and attempted to show that the Municipal Water District *Act* of 1911,

---

[1]As Appellant correctly states:

> "In the California practice the pre-trial order supersedes the pleadings and 'controls the subsequent course of the case . . .' [California Rules of Court, Sec. 216]" (Appellant's Statement as to Jurisdiction, p. 8.)

as amended, (Stats. 1911, ch. 671, p. 1290 as amended; Deering's Water Uncodified Acts 1962 Ed. Act No. 5243; West's Water Code Appendix Section 20, hereinafter called the "Act") under which the proposed Big Bear Municipal Water District was being formed, was uncontitutional.[2] Specifically he claimed that the boundaries of the proposed District included his property, that his property would receive no benefit from its inclusion therein [Clk.Tr. p. 3], that the Act provided no means by which he could secure a hearing as to whether his properties would be benefited by the Proposed District [Clk.Tr. p. 3], that the Act unconstitutionally delegated power to determine the boundaries of the proposed District [Clk. Tr. p. 3], and to deprive plaintiff of his property without due process of law, contrary to Article I, Sec. 14 of the California Constitution and the Fourteenth Amendment to the Constitution of the United States [Clk.Tr. p. 3] and that the election would cause him damage as a taxpayer [Clk. Tr. p. 4].[3] These contentions were carried into the Statement of the Case [Clk. Tr. p. 104, lines 1-9] as were Appellees' contentions to the contrary [Clk.Tr. p. 104, lines 10-15].

---

[2]Italics here as elsewhere are ours unless otherwise noted.

[3]The Municipal Water District *Act* of 1911, as amended, was in force during all of the proceedings below until after the remittitur had issued from the District Court of Appeal. On September 20, 1963 the *Act* was codified as Division 20 of the Water Code, commencing with Section 71,000 and denominated the "Municipal Water District *Law* of 1911" (Stats. 1963, Chapter 156, as amended by Chapters 103, 457, 1151 and 1513). Section 73,000 of the Water Code repealed the *Act* and Section 73,001 added a saving clause. Appellant, in purported conformity with Rule 15 1(b)(v) of the Rules of this Court, has annexed to his Statement as to Jurisdiction certain sections of Division 20 of the Water Code, which, as we have said, were not in force until after judgment of the California Appellate Court had become final in the state courts.

2. The date of the judgment sought to be reviewed is July 17, 1963. It was entered the same day. On August 6, 1963 the District Court of Appeal denied Appellant's petition for rehearing. On August 16, 1963 the decision became final in the District Court of Appeal, subject to the granting of a hearing by the Supreme Court of California. On September 11, 1963 the Supreme Court of California denied a hearing and on September 16, 1963 the remittitur issued from the District Court of Appeal. On December 9, 1963 Appellant filed a Notice of Appeal to this Court in the District Court of Appeal, the court having possession of the record, and served the same on Appellees.

Although, as we have said, the action was originally commenced in the state court to enforce the taxpayer's right not to have public funds wasted by calling an election under a law claimed to be unconstitutional, the state courts met Appellant's challenge that the Act was unconstitutional and squarely decided, both in the Superior Court and in the District Court of Appeal that the Municipal Water District *Act* of 1911, as amended, was not unconstitutional or violative of plaintiff's rights under Article I, Sec. 14 of the California Constitution or the Fourteenth Amendment to the Constitution of the United States. Appellant relies on 28 U.S.C. Sec. 1257(2) as conferring jurisdiction of this appeal.

The District Court of Appeal affirmed the trial court's judgment and ordered a temporary restraining order dissolved. Thereafter, the District Court of Appeal denied Appellant's Application for a stay pending appeal to this Court. Mr. Justice Douglas of this Court on December 27, 1963 denied a similar application for

such a stay. The election was held (as admitted in the Statement as to Jurisdiction, p. 6), on January 7, 1964, the formation of the proposed District received a favorable vote of the electors, the election returns were canvassed and the incorporation papers were filed with the California Secretary of State.

3. The sole purpose of the action was to prevent the holding of the election, as Appellant admits in his "Application for a Stay in the Nature of an Injunction," dated December 11, 1963 [p. 9, lines 16-17] (hereinafter often abbreviated "App. for Stay"). As we have said, the election has been held. In such case, as Appellant asserted in its said Application for Stay,

> "[T]he jurisdiction of this court will be defeated . . ." [App. for Stay, p. 9, line 24.]

Nor did Appellant depart from this theory of the case in Appellant's Reply to Appellees' Opposition for Application for Stay (hereinafter abbreviated "Appellant's Reply"). There Appellant complained that

> "Not denied by appellees is the decisive fact that unless the proposed election is stayed pending this appeal, there will be nothing upon which the judgment of this court can operate by the time the decision is had." [Appellees' Reply, p. 2, lines 2-5.]

4. For the same reason none of the cases cited in Appellant's Statement as to Jurisdiction [p. 3] is in point. In none of them was the question moot. Moreover, all of these cases involved a district in the nature of an improvement or assessment district. None of them involved a quasi-municipal district such as the Big Bear Municipal Water District.

5. The state statute, whose validity was incidentally drawn in question below as a ground for Appellant's relief under Section 526a, California Code of Civil Procedure, is the California Municipal Water Distict *Act* of 1911 [Cal.Stats. 1911, ch. 671, p. 1290], as amended but not including the Codification of 1963 [Cal.Stats. 1963, Chs. 156, as amended by Chs. 163, 457, 1151 and 1513], being Division 20 of the California Water Code beginning with Section 71,000, expressly designated the "Municipal Water District *Law* of 1911."

Questions Presented.

1. Where an appellant brings a taxpayer's action for the sole purpose of preventing the holding of an election because, he claims, the act under which the election is to be held is unconstitutional and the election would be a waste of county funds, does the fact that the election has been held make his action moot therefore defeating the jurisdiction of this court, as Appellant contended to this court in December 1963?

2. But if, as Appellant now contends, the constitutional question is still involved, the federal question which should be sought to be reviewed is not, as stated by Appellant, but rather whether a California statute authorizing the creation of a quasi-municipal corporation, a political subdivision of the state, pursuant to California constitutional mandate, by majority vote, and containing no provisions to the effect that the consent of any particular inhabitant is necessary before his land can be included therein, is in violation of due process of law, as guaranteed by Amendment XIV to the Constitution of the United States?

ARGUMENT.

1. The Constitutional Question Is Moot and the Appeal Should Be Dismissed.

In his "Application for a Stay in the Nature of an Injunction," etc., dated December 11, 1963, Appellant says [p. 9, lines 16-25]:

> "The election—the prevention of the holding of which was the sole purpose of this action—if not restrained will be held on January 7, 1964. * * * Accordingly, absent an injunction, the appellate jurisdiction of this Court will be defeated and the appellant will lose the possibility of garnering the fruits of a successful appeal."

The Application for Stay was denied by Mr. Justice Douglas on December 27, 1963. Thereafter, the election was held and a large majority of the voters (1258 for; 438 against) voted in favor of forming Big Bear Municipal Water District. The position taken by Appellant in his Application for a Stay, above quoted, is directly contrary to the position he now takes in his Statement as to Jurisdiction. Appellant admits

> "[T]he question of an injunction against holding it [the election] is very likely moot" [Statement as to Juris. p. 6].

Nevertheless Appellant continues, saying:

> "But that does not dispose of the case as a whole or of the constitutional question involved in it." [Statement as to Juris. p. 6].

The latter contention is directly contrary to his direct statements in his said Application for Stay that:

> "If it [the election] is held before this court can finally act on the within appeal * * * there

> will obviously be no subject-matter upon which a judgment of this Court could operate." [Application for Stay p. 2, lines 27-30]

and that [p. 9]:

> "[A]bsent an injunction, the appellate jurisdiction of this court will be defeated."

and contrary to his statement in Appellant's Reply [p. 2] that

> "[U]nless the proposed election is stayed pending this appeal there will be nothing upon which the judgment of this court can operate by the time decision is had."

Assuming, in *arguendo*, that the Act was unconstitutional as to Appellant, what relief could the Court award him under his pleadings? Once the election has been held, as it was,

> "In a legal sense the judgment could not be executed, and amounts in fact to no more than the expression of opinion upon the validity of the acts in question." (*Muskrat v. United States*, 219 U.S. 346 remanding with directions to dismiss for want of jurisdiction.)

Appellant correctly said in his Application for a Stay that "the prevention of the holding of [the election] was the sole purpose of this action" (App. for Stay, p. 9 lines 16 and 17) and that is indeed exactly what the record shows. There was no allegation of any specific money damage to Appellant because of the inclusion of his property in the proposed municipal water district. Nor did he seek an injunction to prevent the collection of District taxes. All the allegations [Clk. Tr. p. 3] were leading up to his contention that the Act was unconstitutional and any election for the formation of the

Big Bear Municipal Water District would be a waste of public funds. The gist of his complaint is found in Paragraph IX [Clk. Tr. p. 41] that the cost of the election will exceed $1,500.00 and will be borne by the County of San Bernardino, of which plaintiff is a taxpayer.

The pre-trial order which Appellant says controls the subsequent course of the case is found in the record [Clk.Tr. 112-114]. It determined that:

> "1. The nature of the case is set forth in the joint 'Statement of the Case' and 'Joint Written Statement of the Matters Agreed Upon' signed by the parties filed herein and hereby incorporated in this order." [Clk.Tr. p. 112, line 31 to p. 113, line 3.]

The "Statement of the Case" and the "Joint Written Statement of the Matters Agreed Upon" signed by all the parties and incorporated by the trial court in its pretrial order are found in Clk. Tr. p. 103-105. The first paragraph of the Statement of the Case already quoted herein shows that, as Appellant stated to Mr. Justice Douglas: "The election—the prevention of the holding of which was the sole purpose of this action" [App. for Stay, p. 9, lines 16-18].

It is true that Appellant contended in its Statement of Contentions of Law the same contentions as to the unconstitutionality of the Act he had made in his complaint. [Clk.Tr. p. 102, lines 11-29; p. 104, lines 1-9] and that Appellees' legal contentions were to the contrary [Clk.Tr. p. 104, lines 9-14], but it must always be remembered that Appellant's contention was still a build-up for his main point that the County of San Bernar-

dino was wasting public funds in calling an election under the Municipal Water District Act of 1911 because the Act was unconstitutional and that Appellees were denying this contention.

As the sole purpose of the action was to prevent holding the election, and as the election has been held, therefore the action is moot and the attempted appeal should be dismissed. (See Robertson & Kirkham's Jurisdiction of the Supreme Court of the United States by Wolfson and Kurland, (1951 Ed.) pages 518-520.)

2. In Any Event Appellant's Appeal Does Not Present a Substantial Federal Question.

Appellant's statement of Questions Presented treats a municipal water district as a "special improvement district" and speaks of subjecting Appellant's land "to taxation and assessment to pay for the special improvements without any hearing" as to whether the land is or will be benefited by the improvement [State. as to Juris. pp. 4-5].

The opinion of the District Court of Appeal and the California authorities therein quoted demonstrate that a municipal water district formed under the Act is *not* a "special improvement district"; does *not* subject the owner's land "to taxation and assessment" to pay for special improvements, but is a quasi-municipal corporation carrying on governmental functions and utilitarian objects of duly incorporated cities and towns.

On March 28, 1911 the Legislature proposed to the people an amendment to the State Constitution amending Section 19 of Article XI (see Appendix 2). The proposed amendment provided that any "municipal corporation" may establish and operate public works for

supplying its inhabitants with light, water, power, heat, transportation, telephone service and other means of communication.

On May 1, 1911 the Legislature adopted the Act providing for the formation of municipal water districts (Stats. 1911, ch. 671, p. 1290).

On October 10, 1911 the constitutional amendment was adopted by the people.

The constitutionality of the Act as amended came before the Supreme Court of California in November 1917 in the case of *Henshaw v. Foster*, 176 Cal. 507. It was there held constitutional against the same claims that are here made by Appellant. The Supreme Court, speaking of the Act as amended, said:

> "By the law and under its sanctions the people of one or more municipalities, with the adjacent territory, may unite for the joint benefit of all *forming a municipal corporation* through which they may accomplish that which it would be impossible for any one of the constituent municipal or suburban units to perform."
>
> 176 Cal. 511.

In *Morrison v. Smith Bros., Inc.: East Bay Municipal Utility District*, 211 Cal. 36, the Supreme Court of California, after discussing irrigation, reclamation, and drainage districts (211 Cal. 40-41), and quoting in part from Article XI, Section 19 of the California Constitution, said:

> "That the term 'municipal corporation', as above used, was not intended to be limited to municipal corporations proper, as defined in this opinion, but was intended to include *quasi*-municipal corpora-

tions similar to respondent, is well settled. Immediately after the adoption of the above constitutional provision the legislature amended the Municipal Water District Act of 1911 (Stats. 1911, p. 1290, as amended Stats. 1911, Ex.Sess., p. 92), which permitted the creation of districts similar in many respects to respondent."

211 Cal. 41.

The court then cited *Henshaw v. Foster (supra)* and quoted the language we have above quoted, italicizing the language "forming a municipal corporation." (211 Cal. 41.)

The Supreme Court of California then said:

"Thus, from the very first, the courts have recognized that the above constitutional provision has created a new type of public corporation very similar to municipal corporations proper, but radically different from the state agencies above discussed."

211 Cal. 42.

Later on in *Henshaw v. Foster, supra,* the Supreme Court made the following distinction (which we earnestly contend is controlling of the case at bar) between an assessment district, as such, and a district organized as a public corporation insofar as the question of when a hearing must be held under the Act:

"An important distinction is to be observed between a proceeding which has for its purpose the making of a local public improvement and one for the creation of a district having extensive powers. As Mr. Justice Shaw said, in delivering the opinion in *Wilcox v. Engebretsen,* 160 Cal. 288-293, [116 Pac. 750,752]: 'Another distinction is to be

made between the proceedings of a board or council acting in pursuance of some delegated legislative *authority in creating or extending a political subdivision of the State, as a county or a city, a proceeding which does not directly affect private property, and proceedings to open, grade, regrade, or improve a street, which do directly charge or affect private property.* (*People v. Ontario*, 148 Cal. 632, 634, [84 Pac.205]; *People v. Loyalton*, 147 Cal. 779, [82 Pac. 620]; *Dean v. Davis*, 51 Cal. 412; *In re Madera Irr. Dist.*, 92 Cal. 323, [27 Am.St. Rep. 106, 14 L.R.A. 755, 28 Pac. 272, 675].) * * *'"

176 Cal. 513-514.

The opinion of the District Court of Appeal (Appendix A to Appellant's Statement as to Jurisdiction) makes plain this distinction between a quasi-municipal corporation and irrigation, reclamation and assessment districts. The District Court of Appeal quoted at length from *In re Orosi Public Utility District*, 196 Cal. 43, which upheld the validity of that organization under the Public Utility District Act (Stats. 1921, ch. 560, p. 906, in its original form [Opinion App. A, pp. 7-14]. At pages 10 and 11 of Appendix A the District Court of Appeal quoted from *In re Orosi Public Utility District*, 196 Cal. 57,58, thereby likening a public utility district to a municipal water district as follows:

"It is quite apparent to us that the legislature had in view such association of the people living in the outlying districts, when it enacted the statute providing for the formation of public utility districts in the unincorporated territory of the state. It thereby provided for the creation of public

agencies or *quasi*-municipal corporations, the declared purpose of the act being to extend to the inhabitants of such districts, when properly organized, advantages in the use and benefit of certain utilities which they might not be able to obtain in any other way, and which, from common experience, we know tend to promote the general welfare of the people of the state. * * *."

* * *

"Any tax, therefore, levied and collected for the purpose of supplying such municipal capital is not a tax or assessment on property directly benefited by the construction of some local improvement, but is a general tax levied just as, and for the same purpose that, any general municipal tax is imposed for carrying on the governmental functions and utilitarian objects of duly incorporated cities or towns."

That a municipal water district is given powers similar to those of a municipality is altogether apparent by a review of some of the provisions of Section 12 of the Act (See Appendix 3). The district is authorized to acquire water works systems; to construct, improve and operate public recreational facilities appurtenant to any water reservoir; to lease water storage; to supply and deliver district water to publicly owned and operated golf courses and other publicly owned and operated recreational facilities and public schools; to restrict the use of district water during any emergency caused by drought; to purify and salvage sewage and storm waters and to operate facilities for the treatment and disposal of sewage; and to acquire and construct and operate facilities for providing fire protection to the district.

California law authorizes water district boards of directors to fix the rates and district taxes (Sec. 24 of the Act, codified as Water Code Section 92093 App. B, p. 31; Revenue & Taxation Code, Sec. 2151; Gov. Code, Sec. 29040, see App. 4) and provides for a hearing on public notice of the time at which any taxpayer may appear and be heard. (Gov. Code Sec. 29080, App. 4.) In addition the California Constitution provides that the board of supervisors of the several counties of the state shall constitute boards of equalization for their respective counties whose duty is to equalize the valuation of the taxable property in the county for the purposes of taxation (Cal. Const. Article XIII, sec. 9, Appendix 4).

Appellant despite the facts appearing on the face of the Act and its codification (Appendix 3), of which the California courts, and this Court on appeal will take judicial notice, alleges that his property will not receive "any other benefit from inclusion in the Proposed District" [Clk.Tr. p. 3, line 9]. In *Santa Barbara Water Agency v. All Persons*, 47 Cal.2d 699, the Supreme Court of California pointed out that the question of benefits to land within a district had been exhaustively considered in *Los Angeles County Flood Control District v. Hamilton*, 177 Cal. 119 and referring to that case said:

> "In referring to numerous cases involving problems closely related to the present one, the court concluded that an 'examination of these cases will show that the courts have regarded an incidental or indirect benefit as sufficient to justify the imposition of a part of the burden of the improvement. Such indirect benefit may result from the improvement of neighboring and surrounding land,

and the consequent increase in the value of all land within the district. * * *.'"

47 Cal.2d 712.

Many other California Supreme Court cases directly in point are cited and quoted further in the Opinion of the District Court of Appeal, but we do not consider it necessary to burden this court with a repetition of these quotations.

In the light of the California decisions which we have discussed we must disagree with Appellant's statement of Questions Presented. The cases which Appellant cites in support of the "Substantiality of the Question" [Statement as to Jurisdiction, pp. 11 and 12] do not involve quasi-municipal districts such as the kind discussed in the Opinion; but involve special assessment districts as follows:

Chesebro v. Los Angeles Flood Control District, 306 U.S. 459, strongly relied on by Appellant [Statement as to Jurisdiction, p. 11] involved the power of an administrative board "to levy special assessments on his land" (306 U.S. 460). *Browning v. Hooper*, 269 U.S. 396, involved an assessment for a road district. *Norwood v. Baker*, 172 U.S. 269, involved special assessments upon private property to meet the cost of public improvements (172 U.S. 278). *Embree v. Kansas Road District*, 240 U.S. 242, involved a taxing district—a road improvement district.

Myles Salt Company v. Iberia Drainage District, 239 U.S. 478, involved a drainage district. That case is readily distinguishable and the rule is not applicable here. The Supreme Court of California has distinguished the *Myles* case in *People v. City of Palm Springs*, 51 Cal.2d 38, in which, sustaining a judgment for the City, which

had annexed uninhabited territory, said of the *Myles* case:

> "Special taxing districts can confer but one readily ascertainable benefit peculiarly advantageous to the property within the district and if it does not accrue to particular land, an assessment of that land to finance the improvements amounts to a taking of property without due process of law. But the rule is otherwise with respect to municipal corporations whose advantages are general and varied, including 'the legally presumed intangible benefits resulting from the privilege of being part of an organized community.'"
>
> 51 Cal.2d 47-48.

The last case cited by Appellant in support of substantiality is *Fallbrook Irrigation District v. Bradley*, 164 U.S. 112. This is the same case mentioned in *In re Orosi Public Utility District, supra*, 196 Cal. 43 quoted by the Opinion [Statement as to Jurisdiction, Appendix A, page 9] in which the Supreme Court said in effect that in cases where *Fallbrook Irrigation District* is applicable to assessment districts it has been constantly adhered to by the California courts, but it "does not apply to every kind of public or *quasi*-public corporation" (196 Cal. 51).

Appellant contends [Statement as to Jurisdiction, pp. 13 and 14] that the Act, by giving the power to define the boundaries to private persons who initiate the proceedings "Control over Appellant's property is thus delegated to private persons." [State. as to Juris. p. 14.] This question of delegation of power has been held by this court not to present a substantial federal question. *Ohio v. Akron Park District*, 281 U.S. 74, 79; *Neblett v. Carpenter*, 305 U.S. 297, at 302.

Considering the actual question pres
there can be no doubt that a substanti
tion is not involved.

Conclusion.

We respectfully submit that Appel
moot, and for that reason the appeal
missed. But in any event we submit
lant's appeal does not present a substant
tion and on that ground the appeal sho
or dismissed.

Respectfully submitted,

JOHN N. CRAMI
Attorney for

Of Counsel:

STANFORD D. HERLICK, *County C*
JOHN D. WATT, *Deputy County C*
J. D. BARNUM, JR.

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ER,
Appellees.

ounsel.
ounsel.

APPENDIX 1.

SECTION 526a CALIFORNIA CODE OF CIVIL PROCEDURE.

"526*a*. An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. This section does not affect any right of action in favor of a county, city, town, or city and county, or any public officer; *provided*, that no injunction shall be granted restraining the offering for sale, sale, or issuance of any municipal bonds for public improvements or public utilities."

Stats. 1911 p. 87.

APPENDIX 2.

SECTION 19 OF ARTICLE XI OF THE CALIFORNIA CONSTITUTION, AMENDMENT ADOPTED OCTOBER 10, 1911.

"Sec. 19. Any municipal corporation may establish and operate public works for supplying its inhabitants with light, water, power, heat, transportation, telephone service or other means of communication. Such works may be acquired by original construction or by the purchase of existing works, including their franchises, or both. Persons or corporations may establish and operate works for supplying the inhabitants with such services upon such conditions and under such regulations as the municipality may prescribe under its organic law, on condition that the municipal government shall have the right to regulate the charges thereof. A municipal corporation may furnish such services to inhabitants outside its boundaries; *provided*, that it shall not furnish any service to the inhabitants of any other municipality owning or operating works supplying the same service to such inhabitants, without the consent of such other municipality, expressed by ordinance. [*Amendment adopted October 10, 1911.*]

Stats. 1911 Part Two p. 2180.

APPENDIX 3.

CERTAIN SUBSECTIONS OF SECTION 12 OF THE MUNICIPAL WATER DISTRICT ACT OF 1911 AS AMENDED STATS. 1961 CHAPTER 669 PAGE 1887 ET SEQ., DEFINING THE POWERS OF A DISTRICT:

"5. To acquire, or contract to acquire, waterworks or a waterworks system, waters, water rights, lands, rights and privileges and construct, maintain and operate conduits, pipelines, reservoirs, works, machinery and other property useful or necessary to store, convey, supply or otherwise make use of water for a waterworks plant or system for the benefit of the district, and to complete, extend, add to, repair, or otherwise improve any waterworks or waterworks system acquired by it as herein authorized;"

Codified 1963 Water Code Section 71691 Appellant's Appendix B page 27.

"5a. To construct, maintain, improve and operate public recreational facilities appurtenant to any water reservoir operated or contracted to be operated by the district, and to provide by ordinance regulations binding upon all persons to govern the use of such facilities, including regulations imposing reasonable charges for the use thereof. Violation of any such regulation shall be a misdemeanor;"

Codified 1963 Water Code Section 71660 Appellant's Appendix B page 25.

"6. To lease of and from any person, firm or public or private corporation, or public agency, with the privilege of purchasing or otherwise, all or any part of water storage, transportation or distribution facilities,

existing waterworks or a waterworks system, and to carry on and conduct waterworks or a waterworks system; also to sell water under the control of the district to cities, and to other public corporations and public agencies within the district, and to the inhabitants of such cities and of other territory within the district, and to persons, corporations, and other private agencies within the district for use within said district without any preference, and it may, whenever the board shall find that there is a surplus of water above that which may be required by such consumers within said district, sell or otherwise dispose of such surplus water to any persons, firms, public or private corporations or public agencies or other consumers;"

Codified 1963 Water Code Sections 71611, 71612 [Appellant's Appendix B page 25] 71692 [Appellant's Appendix B page 27].

"6a. To supply and deliver district water to publicly owned and operated golf courses and other publicly owned and operated recreational facilities and to public schools, school districts and public school properties, and to fix and establish special rates, terms and conditions for the use and sale of water for each of these purposes; provided, however, that this provision shall not be construed to indicate legislative intent either for or against the existence of any power of the district to furnish water to other persons, firms or corporations at just and reasonable rates;"

Codified 1963 Water Code Section 71613.

* * * * *

"9a. To restrict the use of district water during any emergency caused by drought, or other threatened or ex-

isting water shortage, and to prohibit the wastage of district water or the use of district water during such periods, for any purpose other than household uses or such other restricted uses as may be determined to be necessary by the district; to prohibit use of such water during such periods for specific uses which the district may from time to time find to be nonessential;"

Codified 1963 Water Code Section 71640.

* * * * *

"13. To acquire, control, distribute, store, spread, sink, treat, purify, reclaim, recapture, and salvage any water, including sewage and storm waters, for the beneficial use or uses of the district or its inhabitants or the owners of rights to water therein;"

Codified 1963 Water Code Section 71610 [Appellant's Appendix B page 24].

* * * * *

"19. To acquire, construct, and operate facilities for the collection, treatment and disposal of sewage, waste and storm water of the district and its inhabitants and may prescribe, revise and collect rates or other charges for the services and facilities furnished pursuant to this subdivision. The revenues from such rates and charges may be used to pay the operating and maintenance expenses of such facilities, provide a reasonable surplus for improvements, extensions and enlargements, pay the interest on any bonded debt for such facilities and provide a sinking or other fund for the payment of the principal of such debt as it may become due. The district may provide that such rates and charges may be collected with the water rates of the district and that all rates shall be billed upon the

same bill and collected as one item, and that in the event of failure to pay the whole or any part thereof, the district may discontinue any and all service for which such bill is rendered, but this provision shall not be construed to prohibit the collection of rates or charges by the district in any other lawful manner. The second sentence of Section 33 of this act, shall not be applicable to this subdivision;"

Codified 1963 Water Code Section 71670, 71672 [Appellant's Appendix B page 26 and 71673].

"20. To acquire, construct, and operate facilities for providing fire protection to the district and its inhabitants, including buildings, engines, hose, hose carts, or carriages, and other appliances and supplies for the full equipment of a fire company or department. * * *"

Codified 1963 Water Code Section 71680 [Appellant's Appendix B p. 27].

APPENDIX 4.

PROVISIONS OF THE CODES AND CONSTITUTION RESPECTING THE LEVYING AND EQUALIZATION OF TAXES.

Excerpt From Section 24 of the Municipal Water District Act of 1911, Stats. 1911, page 1290, as Amended Stats. 1955, page 2400:

"Sec. 24. The board of directors shall determine the amounts necessary to be raised by taxation during the fiscal year and shall fix the rate or rates of tax to be levied which will raise the amounts of money required by the district. * * *."

Codified 1963 Water Code Section No. 72093 [Appellant's App. B, p. 31].

Revenue and Taxation Code Section 2151:

"The board of supervisors shall fix the rates of county and district taxes and shall levy the State, county, and district taxes as provided by law."

Government Code Sections as Amended Stats. 1963 Chapter 1209:

"29040. On or before June 10th of each year, as the board [of supervisors] directs, each official or person in charge of any budget unit shall file with the auditor an itemized estimate of anticipated revenues and proposed expenditures. If the board directs, the estimates shall also be filed with the administrative officer."

"29080. On or before August 20th of each year, as the board [of supervisors] directs, it shall meet at the time and place designated in the published notice, at which meeting any taxpayer may appear and be

heard regarding the increase, decrease or omission of any item in the proposed budget or for the inclusion of additional items. All proposals for the increase or the inclusion of additional items shall be submitted in writing to the clerk of the board before the close of the public hearing."

Article XIII Section 9 California Constitution:

"Sec. 9. A State Board of Equalization, consisting of four members, shall be elected by the qualified electors of their respective districts, at each gubernatorial election, whose term of office shall be for four years; whose duty it shall be ... equalize the valuation of the taxable property in the several counties of the State for the purposes of taxation. The Controller of State shall be ex officio a member of the board. The board of supervisors of the several counties of the State shall constitute boards of equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of taxation; provided, such state and county boards of equalization are hereby authorized and empowered, under such rules of notice as the county boards may prescribe, as to the county assessments, and under such rules of notice as the state board may prescribe as to the action of the state board, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value in money of the property contained in

said roll; provided, that no board of equalization shall raise any mortgage, deed of trust, contract, or other obligation by which a debt is secured, money, or solvent credits, above its face value. The present State Board of Equalization shall continue in office until their successors, as herein provided for, shall be elected and shall qualify. The Legislature shall have power to redistrict the State into four districts as nearly equal in population as practical, and to provide for the elections of members of said Board of Equalization. [*As amended November 8, 1960.*]"

Stats. 1961 p. ixxxviii.